

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-11 are pending in the present application, Claims 1-6 having been amended and Claim 11 having been added. Support for new Claim 11 is found, for example, in Fig. 7. The amendments to Claims 1-6 are self-evident from the originally filed disclosure.

Applicant respectfully submits that no new matter is added.

In the outstanding Official Action, Claim 6 was objected to; Claims 1-3 and 6-8 were rejected under 35 U.S.C. §102(a) as anticipated by Applicant's Figs. 9-13 (and pages 1-5 of the specification); and Claims 4, 5, 9, and 10 were objected to for depending from a rejected base claim, but were otherwise indicated as including allowable subject matter.

Applicant thanks the Examiner for the indication of allowable subject matter.

Claim 6 is amended to correct the informality identified in the outstanding Official Action.

Applicant respectfully traverses the rejections on the grounds that the Examiner has not established that Figures 9-13 (and pages 1-5 of the specification) are admitted "Prior Art" or that Figs. 9-13 (and pages 1-5 of the specification) qualify as prior art under any section of 35 U.S.C. §102. Applicant characterizes 9-13 (and pages 1-5 of the specification) in the Background of the Invention section of the specification merely as depicting something "conventional."<sup>1</sup> Applicant respectfully submits that the characterization of what a figure describes as "conventional" does not constitute an admission that the figure qualifies as "Prior Art." Rather, a device may be "conventional" in terms of being used in the home country of the inventors, here Japan, without falling under any section of 35 U.S.C. §102. For example, section 102(a) requires public knowledge or **use of an invention in the United**

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<sup>1</sup> See Brief Description of the Drawings section.

**States** or the patenting or printing of a publication anywhere in the world before the date of invention by the Applicant.<sup>2</sup> Similarly section 102(b) requires public **use or the sale of the invention in the United States** more than one year before the filing date of the application or the patenting or printing of a publication anywhere in the world more than one year before the filing date of the application.<sup>3</sup>

Accordingly, anything that is used or known in Japan may be considered to be “conventional” to Japanese inventors, but this Japanese “conventional” status does not qualify as prior art status under 35 U.S.C. §102.

While valid “Prior Art” may be created by the admissions of an Applicant, these admissions are generally characterized by statements made during prosecution describing certain work as “Prior Art.”<sup>4</sup> For evidence that Figs. 9-13 (and pages 1-5 of the specification) are admitted to be “Prior Art,” the outstanding Office Action points only to the Applicant’s specification. However, Applicant respectfully submits that the term “Prior Art” is not used to describe 9-13 (and pages 1-5 of the specification) in the specification. Instead, Figs. 9-13 (and pages 1-5 of the specification) are described as “conventional” or “background art.”

As the Applicant has not characterized 9-13 (and pages 1-5 of the specification) as “Prior Art,” but has characterized Figures 9-13 (and pages 1-5 of the specification) only as depicting what the Japanese inventors consider to be “conventional” or “background” in Japan, Applicant respectfully submits that no admission of “Prior Art” has been made.

Applicant further submits that the validity of Figs. 9-13 (and pages 1-5 of the specification)

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<sup>2</sup> §102. **Conditions for patentability; novelty and loss of right to patent**

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

<sup>3</sup> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

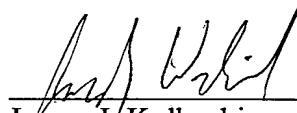
<sup>4</sup> See Abbott Labs v. Baxter Pharm. Prods., 334 F.3d 1274, 67 USPQ2d 1191 (Fed. Cir. 2003) (citing In re Nomiya, 509 F.2d 566, n.5 (CCPA 1975) and In re Fout, 675 F.2d 297, 300-01 (CCPA 1982)).

as "Prior Art" under any provision of 35 U.S.C. §102 has not been established. Accordingly, Applicant respectfully requests that any rejection relying on Figs. 9-13 (and pages 1-5 of the specification) as "Prior Art" be withdrawn.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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